

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PATRICK WAYNE ANDERSON,

Defendant - Appellant.

No. 24-2385

D.C. Nos.

1:21-cr-00089-

DCN-1

1:23-cv-00316-

DCN

OPINION

Appeal from the United States District Court
for the District of Idaho
David C. Nye, District Judge, Presiding

Argued and Submitted February 5, 2026
Portland, Oregon

Filed October 19, 2026

Before: Carlos T. Bea, Morgan B. Christen, and Roopali H.
Desai, Circuit Judges.

Opinion by Judge Desai

SUMMARY*

28 U.S.C. § 2255

The panel vacated the district court’s order denying Patrick Anderson’s pro se motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255, and remanded.

Anderson—who pleaded guilty to possession with intent to distribute methamphetamine and fentanyl, and waived his right to appeal his conviction and sentence—alleged that his trial counsel was ineffective because he failed to file an appeal after Anderson directed him to do so.

The district court directed Anderson’s trial counsel to address Anderson’s allegations, and counsel filed a declaration denying the allegations. The district court denied the § 2255 motion without a hearing.

The panel held that, faced with conflicting sworn statements from Anderson and his trial counsel on a dispositive issue, the district court should have held a hearing to assess each person’s credibility, and abused its discretion by failing to do so before denying Anderson’s motion. Disagreeing with the government’s argument that this is a rare case in which credibility can be “conclusively decided” without a hearing, the panel wrote that Anderson’s allegations are not “so far outside the bounds of reason” that they are “impossible to believe.” The panel thus vacated the order denying Anderson’s § 2255 motion and remanded for an evidentiary hearing.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

COUNSEL

Christopher A. Booker (argued), Assistant United States Attorney; Justin D. Whatcott, Acting United States Attorney; Office of the United States Attorney, United States Department of Justice, Boise, Idaho; for Plaintiff-Appellee.

Craig H. Durham (argued), Ferguson Durham PLLC, Boise, Idaho, for Defendant-Appellant.

OPINION

DESAI, Circuit Judge:

Patrick Anderson moved to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. He alleged that his trial counsel was ineffective because he failed to appeal after Anderson directed him to do so. The district court directed Anderson's trial counsel to address Anderson's allegations, and counsel filed a declaration denying the allegations. Faced with conflicting sworn statements from Anderson and his trial counsel on a dispositive issue, the district court should have held a hearing to assess each person's credibility, and it abused its discretion by failing to do so before denying Anderson's motion. We thus vacate the order denying Anderson's § 2255 motion and remand for an evidentiary hearing.

Background

Anderson was indicted for possession with intent to distribute methamphetamine and fentanyl, unlawful possession of a firearm, and possession of a firearm in

furtherance of a drug trafficking crime. After the district court denied Anderson's motion to suppress evidence, he pled guilty to possession with intent to distribute. In his plea agreement, Anderson waived his right to appeal his conviction and sentence. Both Anderson and his trial counsel signed the plea agreement and affirmed that Anderson had been advised of its contents.

Six months after he was sentenced, Anderson filed a verified pro se motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. He also requested an evidentiary hearing. The motion alleged, in relevant part:

Movant did not receive effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution for trial counsel[']s failure to file an appeal. After the court[']s imposition of sentence, and after movant had directed trial counsel to file an appeal.

[] After the sentencing hearing Anderson discussed with trial counsel his desire to appeal. As of this day no appeal has been filed. After suppression motion was denied, movant requested trial counsel to appeal decision. As of this day no appeal has been filed.

According to *Roe v. Flores-Ortega*, 528 U.S. 470, 145 L.Ed.2d 985 (2000), [a]ttorneys['] failure to file an appeal in spite of being

instructed to do so is per se ineffective assistance.[]

The district court ordered the government to respond and directed Anderson's trial counsel to address Anderson's allegations by way of a declaration. The government filed a declaration from Anderson's trial counsel that denied Anderson asked him to file an appeal. Trial counsel further stated that he consulted his co-counsel, who also did not recall Anderson's request to appeal, and reviewed his notes, which did not reference any such request.

The district court denied Anderson's motion without a hearing. It concluded that Anderson did not allege that he directed counsel to appeal after sentencing, because his motion said that he merely "discussed with trial counsel his desire to appeal" after sentencing. The district court also found that trial counsel's affidavit "thoroughly contradicted" any claim that Anderson directed his counsel to appeal. And because "both parties . . . already submitted . . . their respective versions of the events in question," the district court posited that "bringing them back into court to give testimony that will almost certainly parrot their briefing seem[ed] to be an unwarranted waste of judicial resources." The court also noted that it would be an "exercise in futility" to grant a hearing because "Anderson knowingly and voluntarily waived his appeal rights," so "it appears . . . that the ultimate dismissal of this case is a foregone conclusion." The district court thus held that it could "conclusively determine Anderson's credibility" without holding an evidentiary hearing. Anderson appealed.

Standard of Review

We review de novo the district court's denial of a § 2255 motion. *United States v. Reves*, 774 F.3d 562, 564 (9th Cir. 2014). We review for abuse of discretion the denial of an evidentiary hearing. *United States v. Chacon-Palomares*, 208 F.3d 1157, 1158–59 (9th Cir. 2000).

Analysis

When considering a § 2255 motion, the district court must grant an evidentiary hearing “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b). A hearing is thus required if “the movant has made specific factual allegations that, if true, state a claim on which relief could be granted.” *United States v. Withers*, 638 F.3d 1055, 1062 (9th Cir. 2011) (citation modified). But “[a]n oral hearing is not necessary in all cases.” *United States v. Rodriguez-Vega*, 797 F.3d 781, 791 (9th Cir. 2015). District courts may “expand the record” with “discovery and documentary evidence,” which satisfies the hearing requirement if the motion can “be conclusively decided on the basis of documentary testimony and evidence in the record.” *Watts v. United States*, 841 F.2d 275, 277 (9th Cir. 1988) (per curiam); *see also Shah v. United States*, 878 F.2d 1156, 1159 (9th Cir. 1989).

Here, Anderson's allegations stated a claim for ineffective assistance of counsel, and the expanded record did not conclusively establish that those allegations were false. A hearing was thus required.

I. Anderson’s allegations, if true, state a claim for ineffective assistance of counsel.

To state a claim for ineffective assistance of counsel, a movant must allege that his counsel’s representation was (1) deficient and (2) prejudicial. *Roe v. Flores-Ortega*, 528 U.S. 470, 476–77 (2000). Both elements are met when a lawyer fails to file a notice of appeal after his client instructed him to do so. *Garza v. Idaho*, 586 U.S. 232, 241–42 (2019). This is true even when the defendant waived his right to appeal, *see id.* at 242–43, because the prejudice “is that the defendant lost his chance to file the appeal, not that he lost a favorable result that he would have obtained by appeal.” *United States v. Sandoval-Lopez*, 409 F.3d 1193, 1197 (9th Cir. 2005).

The district court concluded that Anderson alleged that he merely “discussed” an appeal after sentencing but did not allege that he instructed his counsel to appeal. Not so. While Anderson alleged he “discussed” his “desire to appeal,” he also alleged that his trial counsel “fail[ed] to file an appeal . . . [a]fter the court[’]s imposition of sentence, and after [Anderson] had directed trial counsel to file an appeal.” We must construe Anderson’s pro se motion liberally and give him “the benefit of any doubt.” *Brown v. Roe*, 279 F.3d 742, 746 (9th Cir. 2002) (citation modified). And we have held that a pro se petitioner’s allegation that “he asked his lawyer to file an appeal and his lawyer refused” is “specific enough” to state a claim for ineffective assistance. *Sandoval-Lopez*, 409 F.3d at 1198. So too here.

II. The district court abused its discretion by holding that Anderson’s credibility could be “conclusively decided” without a hearing.

Because Anderson’s motion stated a claim for relief, he was entitled to a hearing unless the record “conclusively show[ed]” that his claim failed. *Withers*, 638 F.3d at 1062; *Watts*, 841 F.2d at 277; *Shah*, 878 F.2d at 1159.

The district court was faced with two contradictory sworn statements: (1) Anderson’s sworn statement that he directed his trial counsel to appeal, and (2) trial counsel’s sworn statement that Anderson’s statement “was not true” and that counsel “had no recollection of such a request.” Because credibility “can rarely be conclusive” based only on declarations, the district court needed something more to discern the truthfulness of one statement over the other. *United States v. Werle*, 35 F.4th 1195, 1201 n.3 (9th Cir. 2022) (citation modified). For example, “seeing a witness testify live assists the finder of fact in evaluating the witness’s credibility.” *United States v. Mejia*, 69 F.3d 309, 315 (9th Cir. 1995). Indeed, “[l]ive testimony enables the finder of fact to see the witness’s physical reactions to questions, to assess the witness’s demeanor, and to hear the tone of the witness’s voice—matters that cannot be gleaned from a written [statement].” *Id.*

The district court acknowledged that courts are “required to hold an evidentiary hearing” when, as here, the parties file conflicting statements “as to whether a petitioner did or did not ask his trial counsel to file an appeal.” Yet rather than hold a hearing, the district court concluded that a hearing would be an “exercise in futility” and a “waste of judicial resources.” This was an abuse of discretion. First, the futility of a defendant’s underlying appeal is irrelevant to an

ineffective assistance of counsel claim. Supreme Court and circuit precedent make clear that, when an attorney “fail[s] to file a notice of appeal despite the defendant’s express instructions, prejudice is presumed ‘with no further showing from the defendant of the merits of his underlying claims.’” *See Garza*, 586 U.S. at 247 (quoting *Flores-Ortega*, 528 U.S. at 484). In other words, a defendant need only show that counsel deprived him “of an appeal that he otherwise would have taken,” not that his appeal would succeed. *Flores-Ortega*, 528 U.S. at 484. Second, judicial efficiency is not a valid basis to deny an evidentiary hearing on a § 2255 motion. Deciding the motion based on the record will almost always be more efficient than holding a hearing. But the movant is entitled to a hearing unless the documentary evidence “conclusively show[s]” that he is not entitled to relief. *Watts*, 841 F.2d at 278; 28 U.S.C. § 2255(b).

The government argues that this is a rare case in which credibility can be “conclusively decided” on the record. We disagree. The record can conclusively establish a habeas petitioner’s credibility when his allegations are “so far outside the bounds of reason” that they are “impossible to believe.” *See Shah*, 878 F.2d at 1161–62; *Watts*, 841 F.2d at 278. That is not the case here. In *Watts*, for example, the petitioner alleged that he reached a “secret” agreement with the prosecution that, if he pled guilty, he would be sentenced to no more than twenty years and his wife would be sentenced to no more than two years. 841 F.2d at 276–77. The petitioner pled guilty, but he was sentenced to life, and his wife was sentenced to ten years. *Id.* at 277. After sentencing, he wrote to the court multiple times and never mentioned the alleged secret agreement. *Id.* at 278. Fourteen months after sentencing, he filed a § 2255 motion raising the alleged secret agreement for the first time. *Id.* at 277. On a

record that included the plea hearing, several affidavits, interrogatories of the petitioner and his wife, and the petitioner's letters to the court, the court "conclusively decided" the petitioner's credibility and denied the motion without a hearing. *Id.* at 276–78.

In contrast here, it is not "impossible to believe" that Anderson told his counsel to appeal. *See id.* at 278. Anderson's § 2255 motion was his first filing in the district court after his appeal deadline passed. That his plea agreement included an appellate-waiver provision does not deem his allegations incredible. Anderson could have appealed, for instance, on the basis that the waiver was not knowing or voluntary or that some exception applies. Or Anderson may have simply misunderstood the scope of the waiver. Either way, an appeal waiver does not undermine a defendant's claim that he asked his counsel to file an appeal. Nor is such a claim unusual. *See, e.g., Garza*, 586 U.S. at 242–44 (holding that the presumption of prejudice applies when a defendant shows that "counsel's constitutionally deficient performance deprived him of an appeal," even when he signed an appeal waiver (citation modified)); *Sandoval-Lopez*, 409 F.3d at 1195, 1198 (requiring an evidentiary hearing to determine whether the petitioner "asked his lawyer to file an appeal and his lawyer refused," even though the petitioner signed "as solid a waiver of the right to appeal as can be imagined").

At bottom, when faced with two conflicting statements—one from Anderson claiming he told his trial counsel to appeal, and one from trial counsel claiming otherwise—the district court could not conclusively credit trial counsel's version without the benefit of an evidentiary hearing. *See Sandoval-Lopez*, 409 F.3d at 1198 (explaining that a hearing was necessary "to determine whether [the

petitioner] really did tell his lawyer to appeal”); *Chacon-Palomares*, 208 F.3d at 1159–60 (holding that an evidentiary hearing was required to assess credibility when the expanded record included “conflicting affidavits”).

Conclusion

Anderson stated a claim for ineffective assistance of counsel by alleging that his lawyer failed to file an appeal after Anderson directed him to do so. The lawyer’s conflicting declaration did not conclusively show that Anderson’s allegations were false. We thus remand to the district court for an evidentiary hearing.

VACATED AND REMANDED.